MISCELLANY.

Disbarment for Malicious Attacks upon Courts.—In a proceeding entitled In re Sherwood, in the Supreme Court of Pennsylvania (January, 1918, 103 Atl. 42), it appeared that an attorney for a non-resident in several actions of slander petitioned pursuant to Judicial Code, section 28, for their removal to the Federal District Court on the ground of prejudice and local influence in favor of the plaintiffs, preventing a fair trial in the Court of Common Pleas, or in any other court of the state. After removal, he stated on the argument of a motion of three of the plaintiffs to remand the suits to the Court of Common Pleas, that "the five judges of the Luzerne court are so prejudiced that the defendant could not get a fair trial in our courts." It was laid down that such statement was privileged, as its substance was by statute made a basis of removal, the test being not whether it was true, but whether it was spoken in the course of a judicial proceeding and relevant to the subject or cause of the inquiry. It was accordingly held that an order of the Court of Common Pleas suspending the defendant from practice for six months would be reversed.

This decision was clearly right. The section of the Judicial Code permits a removal to the United States District Court when it shall be made to appear that because of prejudice or local influence the defendant will not be able to obtain justice. The basis of the motion to remove was that prejudice and local influence did not stop with possible jurors, but extended to the judges of the Court of Common Pleas. The respondent argued that judicial prejudice was within the contemplation of Congress and that his client was entitled to a denial of the motion remanding the causes to the state courts. An attorney should no more be subject to discipline for uttering criticism of a judge that was clearly germane to an actual step in a litigation than counsel or a witness should be held liable for slander because of relevant comments on testimony given in a court-room upon the trial of a case. The appellate court speaks of the appellant's "disrespectful criticism of the learned and upright court below." The respondent could scarcely have avoided being "disrespectful." He certainly was not wantonly abusive, and in such a case, unless the proprieties were grossly violated, the privilege should be recognized.

This decision is distinguishable from several others in which an attorney has gone out of his way to make malicious attacks upon judges or fellow lawyers. It has been quite uniformly held in instances of the latter class that the attorney was a proper subject for judicial discipline.

In Matter of Manheim, in the First Appellate Division of the New York Supreme Court (113 N. Y. 136), it was laid down that "an

attorney who, after being defeated in a cause, writes a personal letter to the trial justice complaining of his conduct and reflecting upon his integrity as a justice, is guilty of misconduct and will be disciplined by the court." The court points out that "it is the duty of an attorney having cause to charge a justice of the court with misconduct to prefer formal charges, on the hearing of which the justice may be heard on his own defense," but that an "attorney is not justified in writing a personal letter to the justice or in making informal aspersions calculated to bring the court into disrepute." While it was recognized that such action on the part of an attorney may be ground for suspension or disbarment, as it was asserted the letter was written on impulse, without intent to give publicity to the alleged grievance, the punishment was restricted to a public reprimand.

Similar decisions in other jurisdictions are Re Reid, in the Court of Appeals of the District of Columbia (1916, 44 Wash. L. R. 354); State Board of Examiners *v.* Hart, in the Supreme Court of Minnesota (116 N. W. 212); Re Thatcher, in the Supreme Court of Ohio (89 N. E. 39); Re Thatcher, in the United States District Court, N. D. Ohio (190 Fed. 969); Re Adriaans (17 Appeals, D. C., 39-47). In the opinion of the Court of Appeals of the District of Columbia in this last cited case it was remarked by Chief Justice Alvey:

"The oath taken by an attorney pledges him to demean himself as an attorney and counselor of the court uprightly and according to law. He and all other attorneys becoming members of the Bar of the particular court in which the oath is taken become officers of the court, and as such are bound to observe a proper decorum in their professional dealings and relations not only with the court, but with their brother members of the Bar. He has no right to attempt to cast foul and unfounded aspersions upon the character and conduct of his brother members of the Bar any more than he had to asperse and defame without justification the character and motives of the judge upon the bench."

In the comparatively recent decision of the Supreme Court of Utah in Re Hilton (1916, 48 Utah 172), it was held that "where an attorney, delivering a funeral oration over the body of an executed murderer, venomously attacked the Supreme Court which affirmed the conviction, accusing the court of being improperly influenced by a powerful religious body in the state, charging the court with prejudice and unfairness and garbling the accounts of the trial and of proceedings before the pardon board, the attorney is guilty of professional misconduct which warrants his disbarment." This case involves not only unprofessional vituperation of the court, but passes beyond that into the domain of public offenses by members of the Bar of which the court should take cognizance. Indeed, the case somewhat resembles State ex rel. McLaughlin *v.* Graves (1914, 144 Pac. 484), in which it was held to be sufficient for professional discipline that an attorney had been an active member of a lawless as-

semblage of citizens who took from a city jail certain persons confined therein, forcibly carried them some distance from the city, and, after compelling them to kiss the American flag, ordered them not to return, though such persons had used intemperate and seditious language denouncing the United States flag and government, and had made themselves generally obnoxious to a large majority of the community.—N. Y. Law Journal.

Freaks of the Law.*—It occasionally occurs that the courts of last resort of the different states, provinces and countries, in their interpretation of the statutes governing within their jurisdictions, seemingly make laws which are—to say the least—peculiar. Their interpretation of the written laws are so totally at variance with the words written into the codes that there is furnished an excuse for the oftentimes-heard remark, "Judge-made laws."

Again we find that the legislatures of the different states have before them and in some cases pass—thus embodying into the laws of the land conditions, requirements and prohibitions which, to the ordinary intelligent layman and perhaps especially to the citizen of the local jurisdiction, seem to be freaks, so unlike the general character of laws intended to govern so as best to subserve morality and justice as to be of doubtful use whatever their parentage.

We are constrained to the above from a reading of laws recently passed in the department of Tyrol on the Dalmatia and Austro-Italian frontier. The council of Trient in April last imposed a regulation providing for the collection of a tax upon all unmarried females of sound physical condition above the age of twenty-five years.

This tax provides that upon complaint of any citizen of the municipality, any maid above the age stated may be hailed before an examining magistrate and, if she does not show good cause why she still remains a maiden, may be fined an equivalent of twenty-five dollars in American money. If this fine is not paid, the alternative punishment is forty-five days at such work as the magistrate thinks she is best suited for and it is best for the city that she be assigned to. If, after having been once punished and a period of nine months elapses, she may again be summoned before a magistrate and asked to show cause why within the interim she has not married. In view of the fact that, in this section of country, proposals may emanate from either male or female, desirous of wedding, the defense of the respondent must be something greater or better than that she has not been asked. The punishment imposed in the second instance is approximately one hundred and fifty dollars, or six months at hard labor.

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*By Hon. Robert Gallagher, of the Boston, Massachusetts, Bar in Lawyer and Banker.

Moreover, she is denied all the privileges afforded by the license acts of the municipality and the protection of the police power.

The concluding paragraph of the act, entitled "Tax on Maidens," requires that all female citizens of twenty-three years of age and upward shall, upon arriving at this age, file before a department, which is authorized by law to receive affidavits, a statement giving her full name, age of parents, where born, occupation and residence. A refusal to furnish this information or to give false information renders the party liable to the penalty provided in the first instance. This list of names is printed in the official gazette, posted at the town hall, at each sub-post office throughout the municipality, so that he who runs may read.

In opposition to the above we find that a tax on bachelors is contained in a notice to gentlemen who have not taken unto themselves a better half, and to those who have bachelors in their employ. This notice is issued by G. Deserres, City Treasurer of the city of Montreal, under date of July 10, 1918. The notice, which is required to be published in all of the newspapers, daily and weekly, within the city, reads as follows:

"Notice is hereby given that the City of Montreal has, for the year beginning on the 1st of May, 1918, and ending on the 30th of April, 1919, imposed on every male bachelor having reached the age of 25 years, who resides, works or has a place of business, in the city, exclusive of persons belonging to a religious order, a tax of $10.00, and that the said tax is payable at the office of the City Treasurer (Privileges and Licenses Department), at the City Hall, on or before the first day of September next.

"The resolution imposing such tax provides, under penalty of a fine is $40.00 or two months' imprisonment, that every bachelor held to pay the same shall register, on or before the first day of August next, either at the City Hall, at the Privileges and Licenses Office, or at one of the police stations of the city.

It also provides, under the same penalty and within the same delay, that every person, company or corporation, having in his or its employ, any bachelors liable to said tax, shall file, at the office of the City Treasurer (Privileges and Licenses Department) a declaration sworn before a Commissioner of the Superior Court, or before any other person authorized by law to receive an affidavit, a list of said bachelors, such declaration to contain the name, fore-name, age, occupation and residence of the latter, as well as the address of the place where they are working.

"Any person who refuses to furnish the information he is required to give or who gives any false information is liable to the same penalty.

"Therefore, every bachelor liable to said tax is hereby required, under the above mentioned penalty, to register, as aforesaid, and every

person, company or corporation, having in his or its employ, any bachelors liable to said tax, is also required, under the same penalty, to file at any office (Privileges and Licenses Department) a sworn declaration, as aforesaid."

Just what the effect of these two laws is, or has proven to be, remains to be seen. Whether it will drive into matrimony maidens who have hitherto refused to wear a wedding ring as an evidence of bondage, and whether it will force the chummy club-loving male Quebecer to seek the hand of one whom he will solemnly swear to protect and support, is a serious question. As Lord Chumley once remarked, "We shall see, Messieurs, we shall see."

It was not so many years ago that South Dakota was a paradise for would-be divorcees. Its laws were liberal, its courts lenient. About the only trouble or objection which could be urged against the state as a jurisdictional forum for the tearing apart of bleeding hearts, the cancellation of promises, et cetera, et cetera, and then some, was found in the climate and lack of hotel accommodations, where the festive artist, the gouty financier, and the overdressed or underdressed woman of millions, might temporarily sojourn and in luxury await the promulgation of separation.

Later on come Reno. Beautiful little city, nestled down between the close confines of the mountains on one side, the plains on the other, while Tahoe Lake and Death Valley were within easy striking distance. Reno profited, and profited well, by the advertising afforded through many a cause celebre. From New York, from gay Paree, from the iron-clad city of Pennsylvania, and, in fact, from all over where could be found those who—with or without reason—desired divorces, without the attendant publicity of local courts, came men and women of tender and uncertain ages, who were properly conducted through the labyrinth of legal excuses by competent Nevada counsel.

Reno, on account of its over-advertising, for a little while gave way to Idaho. More recently, owing to a decision of the Supreme Court of the state of Louisiana, with the Chief Justice sounding the clarion note, is the law of that Commonwealth settled whereby, according to our reading, divorces will not be easy but can be conducted successfully through a correspondence course, instructions being given to local counsel by separation-seeking plaintiffs from wherever they may happen to reside.

Years ago, Louisiana was known wherever any language was spoken, as the home of the lottery kings. Put down your dollar, your five or your twenty, and take a chance of winning a fortune. Wherever gambling instinct was found, money flowed to the coffers of the Louisiana lottery. Later on, came horse racing, the Sazarac cocktail, the famous Ramos gin-fizz. Truly—New Orleans was the "City Care Forgot." You pay your money and you take your choice.

If you had the money you could get whatever you wanted. But alas and alack, the past is not of today. The lottery passed into oblivion; horse racing is no longer a certainty; Mr. Bryan has been in Louisiana and the Federal wave of prohibition is likely to engulf even this famous old Creole city. What new fad or fancy is in store —let us see!

The winter climate of New Orleans is unexcelled. Louisiana is under Civil law; its practice being under the old Napoleonic code. In this respect it differs from all other states in the Union. Yet under the due faith and credit clause of the constitution, the judgments and decrees of her courts, must be accepted as final. So then we have the case at bar to which reference has been made, as an evidence of the fact that Louisiana bids fair to out-Reno Reno and to take its place upon the mat along with Scranton, Pennsylvania.

According to the reasoning of the court which we assume met with the unanimous approval of the justices, a plaintiff resident in a foreign state, who never had a domicile or residence in Louisiana, and who never favored that state by setting foot within its confines on but one occasion and then for but thirty-six hours for the purpose of seeking counsel who might afterwards be instructed by mail, may successfully maintain an action for divorce by obtaining service upon a defendant who happened to be passing through New Orleans and stopped over between trains, who had never been domiciled or a legal resident of the state, and who in the issue pleads this in bar to the jurisdiction of the court citing authorities ad libitum. If we are correct as to the Court's decision as reported, then we may expect that Mrs. Moneybags or Mr. Race-Horse Jockey who being dissatisfied with their present living, desire judicial decrees of separation or divorce, will immediately get in touch with Louisiana attorneys through the courtesy of Uncle Sam's mail bag, have depositions taken thousands of miles away, and orders and decrees made in accordance with their wishes by courts of this old French-Spanish commonwealth.